



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Walesh

SUBJECT: SEE BELOW

DATE: October 4, 2018

Approved

Date

10-4-18

COUNCIL DISTRICT: 3

SUBJECT: SALE OF FIVE SMALL FRAGMENTS OF AUTUMN PARKWAY

RECOMMENDATION

Adopt a resolution:

- (a) Declaring 5,455 square feet of land comprised of five small fragments of land on Autumn Parkway, surplus to the needs of the City; and
- (b) Authorizing the City Manager or his designee to execute a Purchase and Sale Agreement with Michael G. Akatiff and Christy D. Akatiff, Trustee of the Michael G. Akatiff and Christy D. Akatiff Revocable Trust in an amount not-to-exceed of \$235,125 for the purchase of approximately 5,455 square feet of property on Autumn Parkway between Coleman Ave. and W. Julian Street and all other documents necessary to complete the transaction.

OUTCOME

Adoption of this resolution will allow for the sale of approximately 5,455 square feet of City-owned property on a portion of Autumn Parkway between Coleman Avenue and W. Julian Street, as described and depicted in Exhibit A and Exhibit B, to Michael G. Akatiff and Christy D. Akatiff, Trustee of the Michael G. Akatiff and Christy D. Akatiff Revocable Trust for \$235,125 that will be deposited to the General Fund.

BACKGROUND

On August 29, 2017 the City Council approved a resolution that conditionally vacated a portion of Old Julian Street between North Autumn Street and Autumn Parkway. The street vacation required that one of two conditions must be satisfied prior to the street vacation taking effect.

The conditions included:

- 1) The City's approval of a land use permit for the development of APNs 259-25-063, 259-25-004, 259-25-005, 259-25-035, 259-29-104, 259-29-093 and 259-29-099, and recordation of a City-approved subdivision map that results in all legal parcels within the subdivision having adequate access to a public street. Staff has been told that Akatiff intends to file for planning permits to consolidate parcels for a future development.
- (2) The buyer: (i) demonstrates to the City's satisfaction that with respect to each Parcel, either (a) the owner has sole ownership and possession of the Parcel and no other persons or entities have a legal right to use or occupy such Parcel and, at the City's discretion, a confirmatory site inspection, or (b) the Parcel has adequate public street access other than via the vacated street property; and (ii) execution of an agreement acceptable to the City that indemnifies and holds the City harmless from any claims arising out of or related to the City's vacation of the street property.

After satisfying condition number 2 and ensuring that all properties that fronted Old Julian were vacant of all tenants the Quit Claim Deed transferring title of Old Julian Street from the City to Akatiff was recorded in the County Recorder's Office on May 25, 2018.

Akatiff is now ready to move forward with the filing of a subdivision map that will consolidate all of his property within the area in order to develop the property. At this time there are five fragment parcels along Autumn Parkway that are owned by the City, which were not necessary for the extension of Autumn Parkway and are not needed for public roadway or any other municipal purpose. These parcels will be vacated as part of the recorded subdivision map. Akatiff has negotiated with staff to acquire the excess property and incorporate the pieces into the final subdivision map. A Purchase and Sale Agreement (PSA) has been prepared for the transfer of the five fragments from the City to Akatiff.

The PSA provides for the sale of the subject property to Michael G. Akatiff and Christy D. Akatiff, Trustee of the Michael G. Akatiff and Christy D. Akatiff Revocable Trust, the adjoining property owner, \$235,125. The sale price of \$235,125 represents the fair market value of the subject properties based upon an appraisal that was previously completed for the sale Old Julian Street.

ANALYSIS

The City of San José holds fee ownership to Lot A, Lot B, Lot C, Lot D, and Lot E, as described Exhibit A (Legal Descriptions) and depicted in Exhibit B (Plat Maps) which comprises five fragment pieces along Autumn Parkway between Coleman Ave and W Julian Street. Lot A is approximately 1,991 square feet. Lot B is approximately 215 square feet. Lot C is approximately 227 square feet. Lot D is approximately 2,843 square feet. Lot E is approximately 380 square feet. None of the lots are independently developable.

Lots A, B, C, D, and E are currently part of the Public Right of Way commonly known as Autumn Parkway, but the lots were unnecessary for the extension of the Autumn Parkway and are not needed for public roadway or any other municipal purpose. Concurrent with the processing of the new subdivision map, the buyer will also be filing for a street vacation of Lots A through E.

Municipal Code Section 4.20.070 allows City staff to engage in direct negotiation with an adjacent property owner, and permits the City Council to approve the sale of a property to the adjacent property owner, for fair market value.

The City negotiated the sale of the property directly with the adjacent property owner (Michael G. Akatiff and Christy D. Akatiff, Trustee of the Michael G. Akatiff and Christy D. Akatiff Revocable Trust) in accordance with Section 4.20.070 of the San José Municipal Code. The proposed sale reflects the fair market value of the property of \$235,125 as determined through an appraisal effective April 1, 2017, which was completed for Old Julian Street which is in close proximity to Lots A through E that was based upon the highest and best use of the property. The purchase price represents a value of \$50 per square foot for each of the fragments.

Staff has negotiated the following terms to incorporate into a Purchase and Sale Agreement with Akatiff:

1. **Purchase Price:** \$235,125
2. **Deposit:** \$10,000
3. **Due Diligence Period of:** 30 days
4. **Condition:** Property to be sold "As-Is"
5. **Close of Escrow:** To occur on or before 30 days from the effective date of the executed Purchase and Sales Agreement
6. **Affordable Housing:** Since the five fragments are all less than the legal building site within the City of San José there is no requirement to record an affordable housing restriction against any of the lots.

Staff recommends that the City Council declare that the property is surplus to the needs of the City and approve the sale of the subject properties to Michael G. Akatiff and Christy D. Akatiff, Trustee of the Michael G. Akatiff and Christy D. Akatiff Revocable Trust according to the terms contained in the Purchase and Sale Agreement.

EVALUATION AND FOLLOW-UP

The transfer of the subject property is anticipated to be completed within 30 days of execution of the Purchase and Sale Agreement by the City. No further actions will be required by staff after the close of escrow.

PUBLIC OUTREACH

This memorandum will be posted on the City Council's Agenda website prior to the October 16, 2018 City Council agenda.

COORDINATION

This memorandum has been coordinated with the City Manager's Budget Office and the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation is associated with this action.

FISCAL/POLICY ALIGNMENT

This sale is in alignment with the Mayor's March 2009 Budget Message in the Section Investment Strategies, Item 1h which stated: "The city is currently undergoing a rigorous asset management review to include the sale of nonessential and underperforming city-owned properties, restructuring of existing leases with for-profit and non-profit operators of city facilities, and leasing of city infrastructure to private or other governmental operators."

HONORABLE MAYOR AND CITY COUNCIL

October 4, 2018

Subject: Sale of five small fragments of property along Autumn Parkway

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COST SUMMARY/IMPLICATIONS

The net proceeds from the sale of this property (\$235,125) will be recognized in the General Fund and allocated either to a capital improvement project or to a reserve for a future capital improvement project as part of the 2018-2019 Mid-Year Budget Review process. The property was originally purchased with Agency tax exempt bonds. Accordingly, in order to comply with IRS regulations related to tax exempt bonds, the net proceeds from the sale of the remnant property will need to be expended on a capital project within two years of the receipt of the proceeds.

CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/

KIM WALESH

Deputy City Manager

Director of Economic Development

For questions please contact Nanci Klein, Deputy Director, at (408) 535-8184.

Attachments

EXHIBIT "A"
LEGAL DESCRIPTION
FOR: STREET VACATIONS

All that certain real property situate in the City of San Jose, County of Santa Clara, State of California, being more particularly described as follows:

LOT A:

Being a portion of Old West Julian Street as shown on that certain Record of Survey filed for record on January 28, 1991 in Book 623 of Maps at Pages 36 and 37, Santa Clara County Records, and all of that land as described in that certain Grant Deed recorded on September 29, 1975 in Book B635 of Official Records, Page 70, Santa Clara County, and being more particularly described as follows:

Beginning at a point of cusp on the northerly line of said land as described in that certain Grant Deed recorded on September 29, 1975 in Book B635 of Official Records, Page 70, Santa Clara County;

Thence along said northerly line, being a non-tangent curve to the left having a radius of 20.00 feet, to which point a radial line bears South 49°05'19" West, through a central angle of 89°56'37" for an arc distance of 31.40 feet to a point on the northwesterly line of said Old West Julian Street;

Thence along said northwesterly line North 49°08'42" East, 11.81 feet

Thence South 40°51'18" East, 60.00 feet to a point hereinafter referred to as Point "A";

Thence South 49°08'42" West, 31.72 feet;

Thence North 40°55'28" West, 30.00 feet;

Thence North 40°54'41" West, 49.98 feet to the Point of Beginning.

Containing 1,991 ± square feet.

LOT B:

Being a portion of Old West Julian Street as shown on that certain Record of Survey filed for record on February 22, 1991 in Book 624 of Maps at Page 22, Santa Clara County Records, and being more particularly described as follows:

Beginning at the easterly corner of the Remnant Property as described in that certain Grant Deed recorded on May 3, 2011 as Document No. 21163261 of Official Records, Santa Clara County;

Thence South 41°00'00" East, 9.74 feet;

Thence South 49°05'19" West, 22.02 feet;

Thence North 40°51'18" West, 9.76 feet;

Thence North 49°08'42" East, 22.00 feet to the Point of Beginning.

Containing 215 ± square feet.

LOT C:

Being a portion of Old West Julian Street as shown on that certain Record of Survey filed for record on February 22, 1991 in Book 624 of Maps at Page 22, Santa Clara County Records, and being more particularly described as follows:

Beginning at the northwesterly corner of easterly corner of that Real Property as described in that certain Grant Deed recorded on June 2, 2010 as Document No. 20728172 of Official Records, Santa Clara County;

Thence South 49°08'42" West, 4.59 feet to the True Point of Beginning;

Thence continuing South 49°08'42" West, 22.15 feet;

Thence North 40°51'18" West, 10.24 feet;

Thence North 49°05'19" East, 22.13 feet;

Thence South 41°00'00" East, 10.26 feet to the True Point of Beginning.

Containing 227 ± square feet.

LOT D:

Being all of that certain 1,998.70 square foot parcel and that certain 844.07 square foot parcel as described in that certain Grant Deed recorded on June 2, 2010 as Document No. 20728171 of Official Records, Santa Clara County;

Beginning at the northeasterly corner of said 1,998.70 square foot parcel;

Thence along the easterly line of said parcel South 23°32'04" East, 58.90 feet;

Thence continuing along said easterly line and along the easterly line of said 844.07 square foot parcel along a curve to the left having a radius of 871.00 feet, through a central angle of 17°27'56" for an arc distance of 265.51 feet;

Thence continuing along said easterly line South 41°00'00" East, 47.61 feet to the southeasterly corner of said parcel;

Thence along the southerly line of said parcel South 49°00'00" West, 5.00 feet to the southwesterly corner of said parcel;

Thence along the westerly line of said parcel North 41°00'00" West, 92.19 feet;

Thence continuing along said westerly line of said parcel and along the westerly line of said 1,998.70 square foot parcel along a curve to the right having a radius of 580.00 feet, through a central angle of 13°41'52" for an arc distance of 138.66 feet;

Thence continuing along said westerly line North 27°18'08" West, 144.41 feet to the northwesterly corner of said parcel;

Thence along the northerly line of said parcel along a non-tangent curve to the left having a radius of 673.26 feet, to which point a radial line bears North 19°36'45" West, through a central angle of 1°06'20" for an arc distance of 12.99 feet to the Point of Beginning.

Containing 2,843 ± square feet.

LOT E:

Being a portion of Fee Acquisition 3 as described in that certain Grant Deed recorded on December 1, 2008 as Document No. 20056603 of Official Records, Santa Clara County, and being more particularly described as follows:

Beginning at the northeasterly corner of that certain 1,998.70 square foot parcel and that certain 844.07 square foot parcel as described in that certain Grant Deed recorded on June 2, 2010 as Document No. 20728171 of Official Records, Santa Clara County, said corner also being on the southeasterly line of said Fee Acquisition 3;

Thence along the northerly prolongation of the easterly line of said 1,998.70 square foot parcel North 23°32'04" West, 15.66 feet to a point on the northwesterly line of said Fee Acquisition 3;

Thence along said northwesterly line South 59°54'17" West, 29.57 feet to the westerly corner of said Fee Acquisition 3;

Thence along the southwesterly line of said Fee Acquisition 3, being a non-tangent curve to the left having a radius of 1,273.00', to which point a radial line bears South 62°33'26" West, through a central angle of 0°27'51" for an arc distance of 10.31 feet to the southerly corner of said Fee Acquisition 3;

Thence along the southeasterly line of said Fee Acquisition 3 the following two (2) courses and distances:

1. North 71°14'02" East 5.77 feet;

2. Along a curve to the left having a radius of 673.26 feet, through a central angle of $1^{\circ}57'07''$ for an arc distance of 22.94 feet to the Point of Beginning.

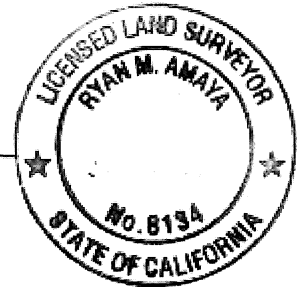
Containing $379 \pm$ square feet.

As shown on Exhibit "B" attached hereto and by this reference made a part hereof.

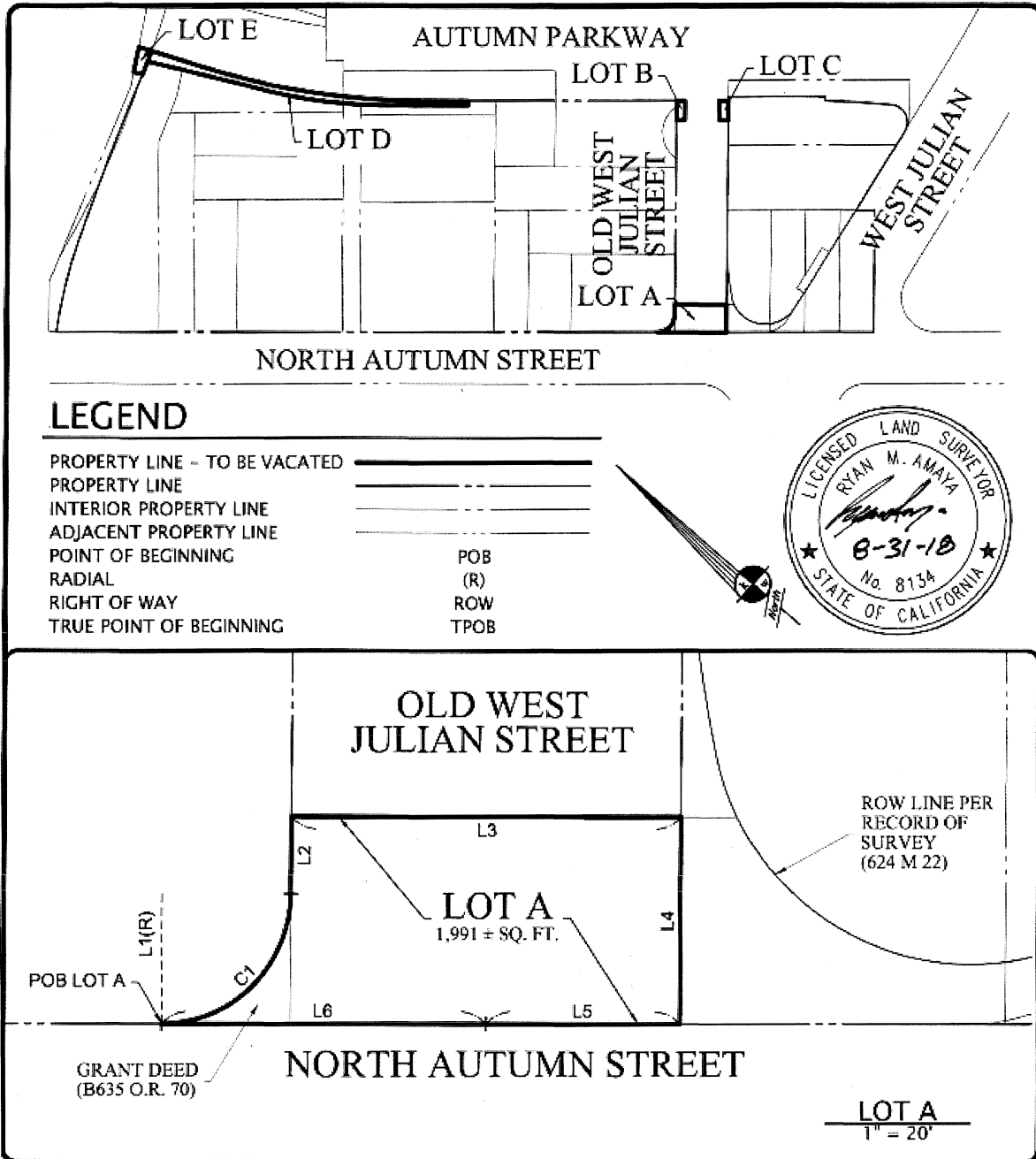
Legal Description prepared by Kier & Wright Civil Engineers and Surveyors, Inc.

8-31-18
Date

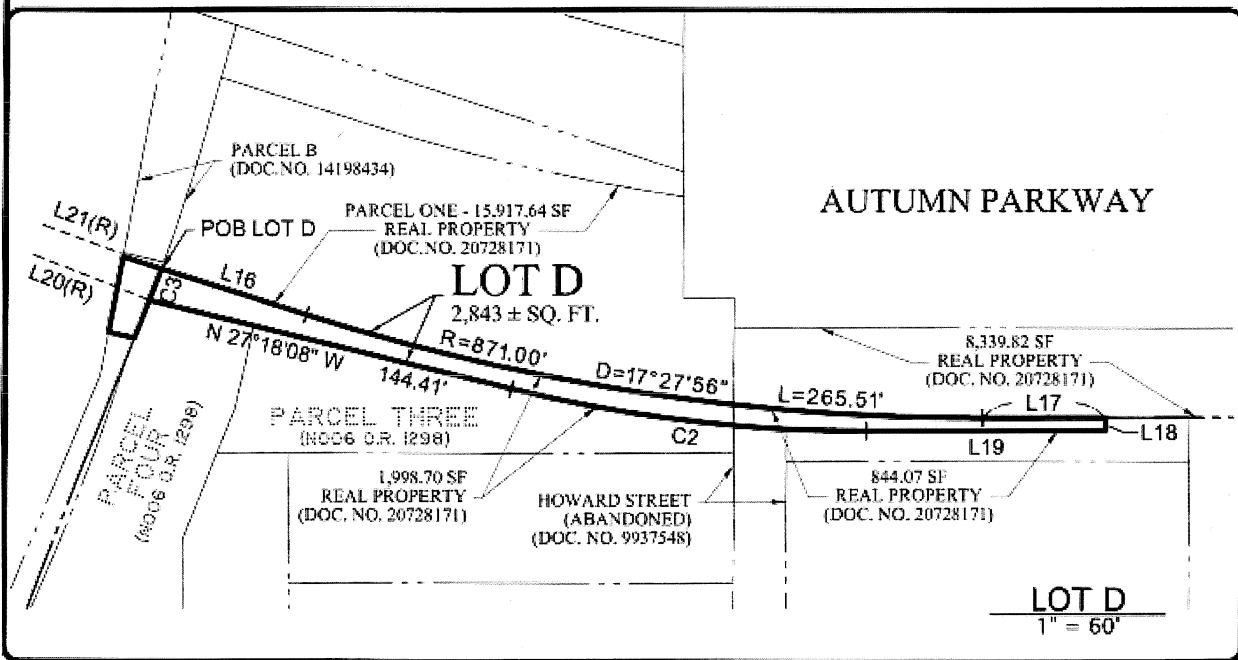
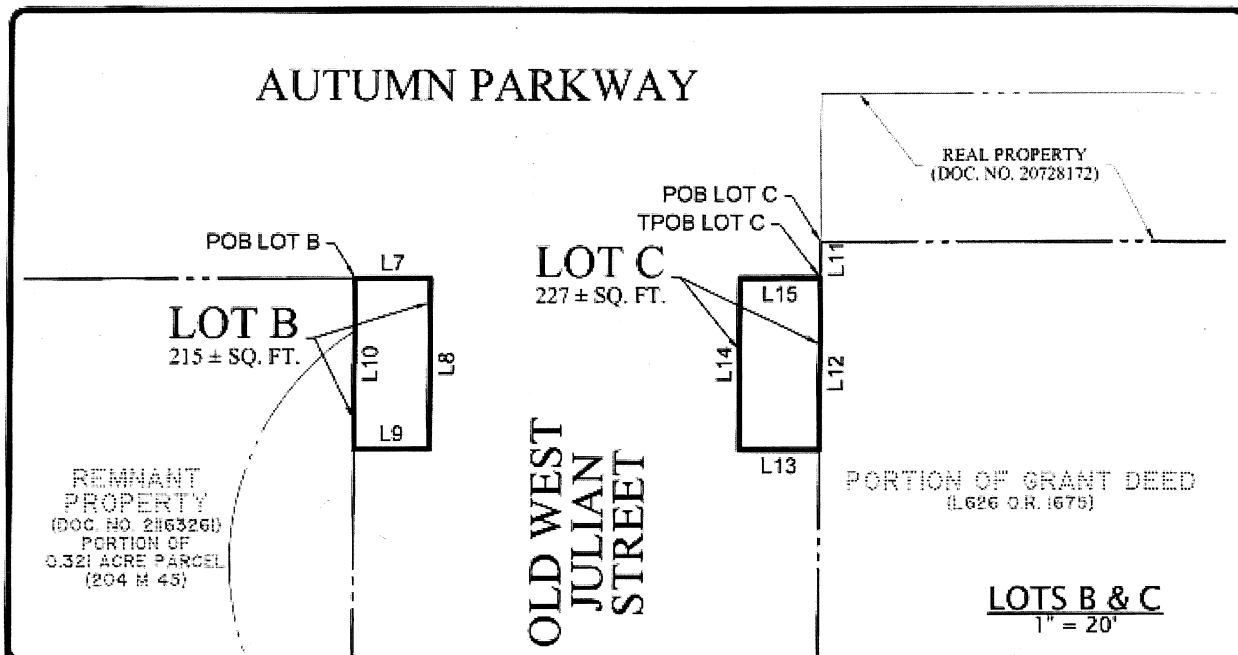

Ryan M. Amaya, L.S. 8134



**EXHIBIT B
PLAT DEPICTIONS
FOR: STREET VACATIONS**

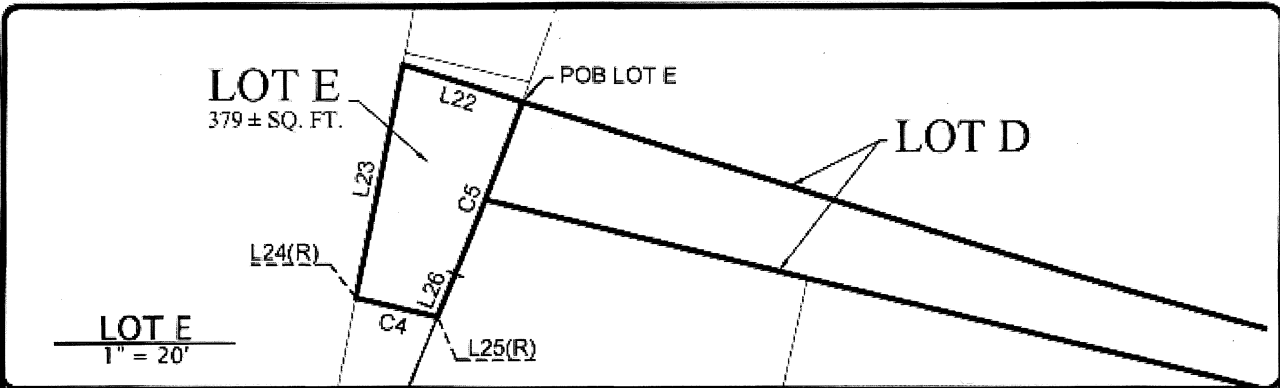


PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR: STREET VACATIONS		DATE	AUG., 2018
		SCALE	AS SHOWN
SAN JOSE		DR. BY	EK
EXHIBIT "B"		JOB	A16216-3
KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS, INC. 3350 Scott Boulevard, Building 22 (408) 727 6665 Santa Clara, California 95054 fax (408) 727 5641		SHEET NO.	1 OF 3



PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR: STREET VACATIONS		DATE	AUG., 2018
		SCALE	AS SHOWN
SAN JOSE CALIFORNIA		DR. BY	EK
		JOB	A16216-3
EXHIBIT "B"		SHEET NO.	2 OF 3
		 KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS, INC. 3350 Scott Boulevard, Building 22 (408) 727 6665 Santa Clara, California 95054 fax (408) 727 5641	

DPF-H00000 2/2005 (METS-5000) (S000) (PLAT) (C-P) (STREET) (M) (A-1) (4) AUG 21, 2018 12:28 PM



LINE TABLE		
LINE	BEARING	DISTANCE
L1	S 49°05'19" W	20.00'
L2	N 49°08'42" E	11.81'
L3	S 40°51'18" E	60.00'
L4	S 49°08'42" W	31.72'
L5	N 40°55'28" W	30.00'
L6	N 40°54'41" W	49.98'
L7	S 41°00'00" E	9.74'
L8	S 49°05'19" W	22.02'
L9	S 40°51'18" E	9.76'
L10	N 49°08'42" E	22.00'
L11	S 49°08'42" W	4.59'
L12	S 49°08'42" W	22.15'
L13	N 40°51'18" W	10.24'
L14	N 49°05'19" E	22.13'
L15	S 41°00'00" E	10.26'
L16	S 23°32'04" E	58.90'
L17	S 41°00'00" E	47.61'
L18	S 49°00'00" W	5.00'

LINE TABLE		
LINE	BEARING	DISTANCE
L19	N 41°00'00" W	92.19'
L20	S 19°36'45" E	673.26'
L21	S 20°43'05" E	673.26'
L22	N 23°32'04" W	15.66'
L23	S 59°54'17" W	29.57'
L24	S 62°33'26" W	1273.00'
L25	S 62°05'36" W	1273.00'
L26	N 71°14'02" E	5.77'

CURVE TABLE			
CURVE	RADIUS	DELTA	LENGTH
C1	20.00'	89°56'37"	31.40'
C2	580.00'	13°41'52"	138.66'
C3	673.26'	1°06'20"	12.99'
C4	1273.00'	0°27'51"	10.31'
C5	673.26'	1°57'07"	22.94'

PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR: STREET VACATIONS		DATE	AUG., 2018
		SCALE	AS SHOWN
SAN JOSE	CALIFORNIA	DR. BY	EK
		JOB	A16216-3
EXHIBIT "B"		SHEET NO.	3 OF 3
		 KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS, INC. 3350 Scott Boulevard, Building 22 (408) 727 6665 Santa Clara, California 95054 fax (408) 727 5641	